

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1323 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KESARBHARTHI MANIBHARTHI

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioners
Mr. L.R.Pujari, ASSTT. GOVERNMENT PLEADER
for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/12/2000

ORAL JUDGEMENT

By means of this petition, the
petitioners have sought for quashing the order dated
17.1.87 in RTS Appeal No. 53 of 1984 in Remand case

no.18 of 1986 passed by the Deputy Collector, Banaskantha at Palanpur, the order dated 9th October, 1989 in Appeal Nos. 21 and 22 of 1987 passed by the Collector, Banaskantha at Palanpur and the order dated 28th December, 1990 in Revision Application no. SRD/Land/BNS/4/90 passed by the Additional Chief Secretary (Revenue), Government of Gujarat, Ahmedabad confirming the same.

2. The petitioners are the legal heirs of the deceased Bava Manibharti Lallubharti of village Vansda, Dist: Banaskantha. Bava Manibharti held agricultural land bearing survey nos. 101/1 and 101/9 in village Vansda, Banaskantha district as community service Inam and which is abolished under the provisions of Bombay Merged Territories and Areas Miscellaneous Abolition Act, 1955.(hereinafter referred to as the said Act). The lands which were given as community service Inam were liable for payment of land revenue to the State Government and occupancy in respect of the above said alienated lands held under Community Service Inam granted to the original occupant Bava Manibharti. The land was known as non-alienable land except with the permission of the competent authority under section 6 of the said Act. Bava Manibharti expired on 26.9.1971 and the petitioners alongwith one other person inherited the property as heirs and legal representatives of the petitioners. The petitioner no.2 Jivan Bharti Manibharti is said to have executed an unregistered Banakhat (agreement to sell) dated 23rd November, 1978 in favour of Hathibhai Chelabhai and Galba Hathi. On the basis of that Banakhat, the Mamlatdar, Palanpur inquired into the matter and during the panchnama found no wells in the land and found the petitioners in actual possession of the land. Hence, the request of Hathi Chela and Galba Hathi for recording Pani Patrak in their names was rejected. Hathi Chela and Galba Hathi filed an appeal against the said order before Deputy Collector, Palanpur which was rejected by an order dated 31st December, 1984. That order was challenged before the Collector, Palanpur in Revision who remanded the matter to the Deputy Collector, Palanpur vide his order dated 6.5.85. The Deputy Collector, after remand, held that Hathi Chela and Galba Hathi were in possession of the land and there was a breach of the tenure under the said Act and hence he also ordered for the forfeiture of the land to the State Government without giving any notice to that effect or hearing in the parties in that behalf. The order passed by the Deputy Collector was challenged before the Collector, Palanpur in the appeal filed by the petitioners. That appeals was registered as Appeal Nos.

21 and 22 of 1987. The Collector remanded the matter to the Deputy Collector without considering the evidence of actual possession of the land of the petitioner, for afresh inquiry as regards the forfeiture proceedings, by his order dated 9.10.89. Being aggrieved by the said order, a Revision Application was preferred before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad and the order of the Collector was confirmed by the Additional Chief Secretary vide his order dated 28th December, 1987. Therefore, the petitioners have challenged the order passed by the authority mentioned above in respect of the forfeiture of the land to the State Government.

3. The learned counsel for the petitioners contended that the land in question as community service Inam which was given to Manibharti originally and after the death of Manibharti Lallubharti, the petitioners devolved on the petitioners. The respondent authorities have erroneously considered and believed that it is the property alienable or transferrable within the meaning of section 6 of the Act. The contention of the learned counsel for the petitioners is that unless possession of any property is transferred to any other person without transferring the title will not amount to property alienable or alienation under section 6 of the said Act. Even if it is assumed for the sake of argument at this stage that one of the petitioners executed an unregistered Banakhat, the ownership or title has not been transferred at all to the alienee i.e. the petitioners will remain owner of that property and will have ownership and title of that property. Mere transfer of possession would not amount to alienation under the provisions of section 6 of the said Act. For that purpose, the transfer of title is also necessary. In this regard, he also relied on the decision of the division bench of this Court in the case of Patel Ganeshbhai Harising vs. Bava Hirabharthi Shankerbharthi and another reported in 1979(2) GLR, 134 wherein it has been held that the second proviso to section 6 is important for the consideration of the matter of that case. It reads as under:

"Provided further that if such land under the terms of alienation was not alienable except with the permission of a competent authority, such land shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine."

It has also been considered that the second proviso to section 6 provides that the land which is unalienable shall not be transferred or partible by metes and bounds without previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order prescribes.

4. The document of that case was unregistered deed of sale in favour of the purchaser. The disputed execution of the document of its unregistered character could not be transfer of the land in question to the purchaser. The contention of the learned counsel for the petitioners is that in the present case, the land is said to have been transferred only on the basis of Banakhat and that is unregistered and there is no sale deed. However, the possession of the petitioners remained throughout. The petitioners have constructed pakka wells and irrigated the land. Without considering the material on record, the authorities came to the conclusion that the possession has already been transferred. Even if it is assumed that possession has been transferred, but there is no evidence on record at all to show that the Banakhat was a registered one or the title was also transferred. For that purpose, there is nothing on record to show that any permission was required to be sought from the State Government or Collector and certain amount has been fixed as land revenue by the authorities concerned. As such, it cannot be said on the basis of the material on record that it is the property alienable or transferrable in favour of the alleged alienees. The authorities have therefore, committed manifest error on the basis of the record without recording any finding that permission or sanction was given for the transfer or required amount was deposited for that transfer, that is required under the provisions of the Act.

5. I have carefully considered the facts and circumstances of the case and the authority relied on by the learned counsel for the petitioners. The authority is squarely applicable to the facts and circumstances of the instant case. The respondent authorities have not at all considered the real character of alienation of the property as required under the provisions of the Act. As such, the petition deserves to be allowed. Accordingly, this petition is allowed. The order No. RTS/Appeal 13/84 of the Deputy Collector, remand case no.18/86 dated 17.1.87 maintained by the Collector, Banaskantha at Palanpur under his order No. K-JMN-4/Appeal 21/87 and

22/87, 4616 to 22 dated 8.10.89 and the order of the Principal Secretary, Revenue Department (Appeals), Ahmedabad passed in Revision under his order no. RD/JMN/Banas-4/90 dated 28.12.90 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

...

***darji